

biological agents, and what is underestimated is the nature of his likely response to outside intervention.

The tactical assumption is that Saddam will be on the defensive with an American and British attack, but the likelihood is that, as troubling as end game problems are, the "beginning conflict" issues may be the most difficult ever confronted in the region and possibly in all of modern warfare. When a cornered tyrant is confronted with the use or lose option with his weapons of mass destruction and is isolated in the Arab world unless he launches a jihad against Israel, it is not hard to imagine what he will choose.

Israel has never faced a graver challenge to its survival. The likelihood is that weapons of mass destruction, including biological agents, will be immediately unleashed in the event of Western intervention in Iraq. In the Gulf War, Saddam launched some 40 Scud missiles against Israel, none with biological agents. Today, he has mobile labs, tons of such agents and an assortment of means to deliver them.

It is true that his stockpiles could be larger in years to come, but Members must understand that the difference between a few and a few hundred tons of anthrax or plague may not be determinative. These are living organisms that can multiply. They can invade a region and potentially the planet.

The most important issue is not the distinction between the various resolutions before us, each should be defeated, but the need to rethink our responsibilities in the manner in which they are carried out. Regime change can be peaceful, it can be discreetly violent, but it need not necessarily entail war.

Over the last half century America's led the world in approaches expanding international law and building up international institutions. The best chance we have to defeat terrorism and the anarchy it seeks is to widen the application of law and the institutions, including international ones that make law more plausible, acceptable and, in the end, enforceable.

Strategies of going it alone, doctrines of unilateralism must be reviewed with care. Nothing plays more into the hands of terrorists than America lashing out. Nothing is more difficult for them than international solidarity. Americans would be wise to craft strategies which are based on our original revolutionary appeal to a decent respect for the opinions of mankind.

We used to have a doctrine of MAD, mutually assured destruction, between United States and the USSR. No one seriously contemplated aggression because of the consequences.

Today, for the first time in human history, we have a doctrine of mutually assured destruction between two smaller countries, Iraq and Israel, one with biological weapons, the other nuclear. The problem is that an American intervention could easily trigger an Iraqi bi-

ological attack on Israel which could be met by a nuclear response. Not only would we be the potential precipitating actor but our troops would be caught in crosswinds and crossfire.

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This is a strategic precipice we should step back from.

The United States today faces a series of challenges unprecedented in our history.

The 20th century was symbolized by three great international struggles: World War I and the challenge of aggressive nationalism, World War II and the battle against fascism, and the Cold War challenge of defeating communism.

Now the United States is confronted with the menace of international terrorism, a phenomenon as old as recorded history, but with elements that are new because of the potential for access to weapons of mass destruction (WMD), the manipulation of religious precepts, and the transnational character of international terrorism in a globalized world.

At issue today is the potential crystallization of these challenges in the Iraqi regime of Saddam Hussein, and the appropriate response of the United States and the world community.

In American history explaining what we do and why we do it is important. Our first revolutionary document, the Declaration of Independence, was an exposition of political philosophy and an explanation of grievances that compelled Americans to act. Today, in a world in which rumor and paranoia and distrust is pervasive, we are obligated to be precise in laying out our objectives and the rationale for military or other actions.

In this regard, there is in Eastern history a hallowed intellectual methodology for determining when a particular military intervention may be considered ethical. This doctrine, developed by ecclesiastics and jurists, followed by statesmen, instinctively accepted by the peoples of many countries in tradition and right, is the doctrine of just war. What is this doctrine? Briefly, it holds that for war to be considered just, it must be animated by a just cause and informed by righteous intention, that it be undertaken by lawful political authority and only as a last resort, and that resort to force be proportionate to the nature of the wrongs committed.

The just war issue is relevant for two inter-related reasons. First, the issue of war involves the gravest of moral questions. Second, not merely the theory but the history of international relations since the First World War embodies distinctions between just and unjust causes of war. The Covenant of the League of Nations, the United Nations Charter, and the Charter of the Military Tribunal at Nuremberg all reject the doctrine of *realpolitik*, the anarchical notion that ours is a Hobbesian world where might makes right.

Although there is a "realist" school of international relations theory which asserts that raw national interest considerations alone should govern all policy making, the more progressive view is that modern world politics are founded upon a conception of international society analogous to the laws and customs of coercion in domestic societies, that resort to violence in international affairs must be regarded either as response to lawful police action or crime. In other words, resort to armed force in international affairs is legitimate only if it is used on behalf or in service to the funda-

mental principles and purposes undergirding international law.

Thus the moral philosopher Michael Walzer observes that "aggression is the name we give to the crime of war." Indeed, the founders of the United Nations were determined, in the words of the Charter, "to save succeeding generations from the scourge of war . . . and to ensure, by the acceptance of the principles and the institution of methods, that armed force shall not be used, save in the common interest." Similarly, the Charter obligates the Member States of the UN to "settle their international disputes by peaceful means," as well as "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the Purposes of the United Nations" (Articles 2(3) and 2(4)). Instead, the Charter attempts to enshrine a system of collective security in which the security Council is authorized to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to "decide what measures shall be taken . . . to maintain international peace and security" (Article 39).

In postwar American diplomacy, the classic exposition of this principle was stated by President Truman in October 1945, when he declared that the fundamentals of American foreign policy would rest in part on the proposition "that the preservation of peace between nations requires a United Nations Organization comprised of all the peace-loving nations of the world who are willing to use force if necessary to insure peace."

The concept of international law enforcement through collective security, therefore, is embodied in the UN Charter and is an integral part of international law, as well as—through the Supremacy Clause—the law of the United States.

Here, the constitutional duty of Congress is clear. Not only does the Constitution vest the power to declare war in Congress, but also it further contemplates that a status or condition fairly described by armed hostility between the U.S. and another state—whether a declared or undeclared war—must be legislatively authorized.

The framers of the Constitution believed that the gravest of all governmental decision—the making of war—should not be the responsibility of a single individual. It should be taken by a democratically elected, geographically and socially balanced legislature after careful debate and deliberation. It would either be tyrannical or irresponsible for a Congress of, by, and for the people to shirk its responsibility and transfer the power to make war to the Presidency. In America, after all, process is our most important product.

In this context, neither the Congress nor the Executive can duck the fundamental question of Constitutional fidelity.

Perspective is always difficult to apply to events of the day, but it would appear that in wake of the events of 9/11 a watershed in American history occurred. A concerned terrorist attack was perpetrated against our institutions, people, and way of life. The imperative to respond is clear. Less clear how and against whom.

In the period following 9/11 the Executive Branch began to articulate a bold new doctrine